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NAPERVILLE, IL 60565

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JUL 01 2005

**OFFICE OF PETITIONS**

In re Application of :  
Nida Abdul-Ghani Nassief :  
Application No. 09/944,564 : ON PETITION  
Filed: September 4, 2001 :  
For: ASTHMA/ALLERGY THERAPY THAT :  
TARGETS T-LYMPHOCYTES AND/OR :  
EOSINOPHILS

This is a decision on the petition under 37 CFR 1.137(a), filed February 17, 2005, to revive the above-identified application.

The petition is **DISMISSED**.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(a)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The rules and statutory provisions governing the operations of the U.S. Patent and Trademark Office require payment of a fee on filing each petition to revive an abandoned application for patent based on unavoidable delay. In this instance, the fee required by law is \$250. No consideration on the merits can be given the petition to revive until the full fee has been received.

In a perusal of the petition and the statements in support of unavoidable delay, petitioner should, instead of pursuing revival under the unavoidable standards of 37 CFR 1.137(a), consider filing a petition stating that the delay was unintentional.<sup>1</sup> Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent

<sup>1</sup> Applicant is advised that, once the fee is submitted for the unavoidable petition under 37 CFR 1.137(a), this fee is not refundable should the finding be found to be unfavorable. Further, the \$250 petition fee cannot be applied towards the \$750 fee for the filing of a petition under the unintentional delay standards of 37 CFR 1.137(b).

and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of an issue fee was "unavoidable." This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b). An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the \$750 petition fee. The form for filing a petition under the unintentional standards of 37 CFR 1.137(b) may be found on the USPTO website (USPTO.gov) under forms. The form number is PTO/SB/64.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITIONS  
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Alexandria, VA 22314

By fax: (703) 872-9306  
ATTN: Office of Petitions

Any questions concerning this matter may be directed to the undersigned at (571) 272-3218.

*Frances Hicks*  
Frances Hicks

Petitions Examiner  
Office of Petitions